(3) (A)

IN THE HIGH COURT OF CHHATTISGARH JUDICATURE AT BILASPUR

CRIMINAL APPEAL NO. 826 OF 2002

Appellant
(In JaiL)

BalKishun S/o. Sivnath
Aged about 21 years resident
Turga, P.S. Lakhanpur
Dist. Surguja (C.G.)

Filed on 3/24 08/08/08
by Shri Preeti Soni Advocate
R. to D.R. (J)
8/9/08

VERSUS

Respondent

The State of Chhattisgarh
Through P.S. Lakhanpur
Dist. Surguja (C.G.)

CRIMINAL APPEAL UNDER SECTION 374 (2) OF CRIMINAL PROCEDURE CODE 1973

(25) A.F.R.

HIGH COURT OF CHHATTISGARH AT BILASPUR

Criminal Appeal No. 826/2002

Balkishun

Vs.

State of Chhattisgarh

Single Bench: Hon'ble Shri Dilip Raosaheb Deshmukh, J.

Present: -
Smt. Hamida Siddiqui, learned counsel for the appellant.
Shri Ashish Shukla, learned Govt. Advocate/Addl. Public Prosecutor for the State.

ORAL JUDGMENT

(~~Passed~~ Delivered on 16-02-2006)

This appeal is directed against the judgment dated 29-06-2002 delivered by Shri P.N.S.Chouhan, 3rd Additional Sessions Judge,District-Sarguja (C.G.) in Sessions Case No.357/2001 whereby the appellant was convicted under Section-376 IPC and was sentenced to undergo R.I. for 7 years.

2. Briefly stated the prosecution story is that on 07-04-2001 at about 8 A.M., Phoolmati PW-1 had gone to the forest to collect Mahua. While returning home, the appellant met her and asked her to stop. On denial, the appellant caught hold of her and forcibly committed rape on her. The prosecutrix returned home and informed about the incident to Banarsi Bai PW-2. The husband of the prosecutrix returned home from village-Lusga on the next day. The F.I.R. Ex.P-1 was lodged by

Phoolmati PW-1 on 08-04-2001 in P.S.-Lakhanpur situated about 20 K.m. away from the place of occurrence at 08.15 P.M. On medical examination of the prosecutrix, Dr.Smt. Asha Bansal found that the vaginal examination was painful and mucosa was inflammed. She opined that the prosecutrix was habituated to sexual intercourse. Petticoat of the prosecutrix was seized vide Ex.P-9 on 09-04-2001 and was sent for chemical analysis along with vaginal slide proved by Dr. Smt. Asha Bansal PW-6 on 16-05-2001. However, the report of Forensic Science Laboratory was not produced before the trial Court. The accused was also sent for medical examination. Dr. Ashok Kumar PW-4 on examining him found that he was capable of performing sexual intercourse. After completion of investigation, the appellant was prosecuted under Section-376 of IPC. The accused-appellant abjured the guilt. The prosecution examined 9 witnesses in support of its case. The accused-appellant pleaded innocence in defence and examined one Jangli Ram D.W.-1. The trial Court relying upon the testimony of prosecutrix which was duly corroborated by Banarsi Bai PW-2, Mangal PW-3 as also by the F.I.R. Ex.P-1 and the medical evidence of Dr.Smt. Asha Bansal PW-6, convicted and sentenced the appellant as aforesaid in para-1.

3. Smt. Hamida Siddiqui, learned counsel for the appellant argued that the appellant has been falsely implicated which was clearly borne out from the cross-examination of Para-3 of the Banarsi Bai PW-2. She further contended that no satisfactory explanation for the delay in lodging the F.I.R. was given by the prosecutrix. It was also pointed out that

Mangal PW-3, husband of the prosecutrix has avoided to answer any question relating to previous enmity with the appellant which is borne out from Para-3 of the testimony of Banarsi Bai PW-2. Lastly, learned counsel for the appellant submitted that the report of Forensic Science Laboratory was also not proved by the prosecution.

4. On the other hand, Shri Ashish Shukla, learned Govt. Advocate has argued in support of the impugned judgment.

5. Having heard rival contentions, I have perused the record of Sessions Case No.357/2001. Phoolmati PW-1 testified that at about 8 A.M. while she was returning home after collecting Mahua, she met the appellant on way and the appellant asked her to stop and upon her denial caught hold her and pressing her mouth, lifted her sari and committed rape on her. Thereafter, the appellant ran away. She started crying and returned home and informed about the incident to Banarsi Bai PW-2. It is pertinent to note here that in the cross examination of the prosecutrix, there is absolutely nothing to rebut her testimony about the rape committed by the appellant on her. No question has been asked regarding the incident to the prosecutrix in cross examination. Banarsi Bai PW-2 has corroborated the testimony of Phoolmati PW-1 that on returning home, she had told her that the appellant had committed rape on her in the forest. She further stated that on the day of incident, the husband of the prosecutrix had gone to village-Lusga. Dr.Smt. Asha Bansal PW-6 testified that she had examined the prosecutrix on 09-04-2001 and

found that the vaginal examination was painful and mucosa was inflammed.

6. So far as the contention of the learned counsel for the appellant regarding the unexplained delay in lodging the F.I.R. is concerned, it is liable to be rejected. The incident had occurred in the morning of 07-04-2001. The evidence shows that the husband of the prosecutrix was not present at home and had gone to village-Lusga and had returned on the next day. The report was lodged by the prosecutrix at 08.15 P.M. on 08-04-2001 P.S. Lakhanpur, situated about 20 K.M. away from the place of occurrence. In the F.I.R. Ex.P-1, the aforesaid reasons for the delay has also been mentioned. It is true that the testimony of Banarsi Bai PW-2 in para-3 of his cross-examination shows that Mangal PW-3, the husband of the prosecutrix had an axe to grind against the appellant. It is also true that Mangal PW-3 has in para-4 of the cross-examination shown ignorance about the facts constituting animosity with the appellant, but, animosity is a double edged weapon and can be used by other side. In this case, no question has been asked in cross-examination to the prosecutrix that she had falsely implicated the appellant due to animosity with her husband. It seems highly improbable that any married woman would lodge a false F.I.R. of commission of rape on her, simply because of some animosity of her husband with the appellant. The contention of learned counsel for the appellant that the report of the Forensic Science Laboratory has not been filed in this case is also of no avail to the defence. The prosecutrix is a married woman

and the semen found on petticoat, would not by itself constitute a strong circumstance against the appellant.

7. Having considered the evidence led by the prosecution in its entirety, I am of the considered opinion that the testimony of the prosecutrix inspires confidence, is unrebutted in cross-examination and duly corroborated not only by Banarsi Bai PW-2 and Mangal PW-3 but also by medical evidence of Dr. Smt. Asha Bansal PW-6 and the F.I.R. Ex.P-1. The conviction of the appellant under Section-376 IPC and the sentence awarded thereunder by the trial Court cannot be, therefore, be faulted with.

8. In the result, this appeal is devoid of merit and is accordingly dismissed. The conviction of the accused-appellant and the sentence awarded thereunder are maintained.

Sd/-
Dilip Raosaheb Deshmukh
Judge

Tumane